

LEGAL GUIDANCE

DONATION OF MEDICAL SUPPLIES

The Constitution of the United States provides that "[No] money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." U.S. Constitution, Art. I, § 9, clause 7. This clause is the basic requirement underlying all budget and accounting actions taken by the legislative and executive branches of the Government. The Congress has the responsibility for providing appropriations, stating their purpose, and their period of availability. In short, the Congress decides what the Government will buy, when it will do so, and how much money is available for this purpose.

A corollary to the Congress' "power of the purse" is its authority to control the disposition of all items purchased with taxpayer funds. Article IV, § 3, clause 2 of the Constitution gives the Congress exclusive jurisdiction to dispose of the real and personal property of the United States. Without the express or reasonably implied statutory authorization, the head of a department or agency of the Government, and all subordinate officials, are powerless to sell, lease, abandon or donate such property. However, Congress has enacted several statutes granting authority to take such actions in specific circumstances. The most significant is the Federal Property and Administrative Services Act of 1949 as amended, 40 U.S.C. 471; 40 U.S.C. 511 (1986). Under its terms, responsibility for the disposition of excess property located in the United States (hereinafter "domestic excess property") lies with the Administrator of General Services. This responsibility has been delegated by the Administrator to the Secretary of Defense. In addition, the Federal Property and Administrative Services Act assigns responsibility for the disposition of excess and surplus property located in foreign areas (hereinafter "foreign excess property") to the head of each executive agency. As a result, the Secretary of Defense controls the disposition of most foreign and domestic excess and surplus property under the control of the Navy. This is accomplished through the

services provided by the Defense Reutilization and Marketing Offices (DRMOs).

Detailed guidance on the disposal of Navy property, including donations, is provided in the Defense Reutilization and Marketing Manual, DoD 4160.21-M. The provisions of this manual are applicable to all elements of the DoD, their subordinate commands, activities, and installations worldwide. The location of the property to be donated is very important as there are different sets of rules for domestic excess property and foreign excess property.

Donations of domestic excess personal property may be made only to eligible donees and only after it has been determined, through the reutilization screening process, that no federal need exists for the property. Authorized donees, which are listed in DoD 4160.21-M (Chapter XIII, Donations), include ships' sponsors and donors of property to the Navy, States in major disaster areas, public airports, service education activities (e.g., American Red Cross, Boy Scouts, U.S. Olympic Committee and schools), public agencies, and veterans' organizations. Special procedural requirements, which vary according to the type of donee involved in any particular case, are also set forth. The reutilization screening process, described in Chapter XI, is intended to identify other potential federal users for property that is no longer needed by its present custodian. This process is a procedural prerequisite to a donation of Navy property. Only when all reutilization screening has been completed does domestic excess property become surplus and therefore, eligible for donation.

DoD 4160.21-M, Chapter VIII, Property Requiring Special Processing, provides guidance on medical equipment and nonconsumable medical supplies. Accountability shall be transferred to the DRMO for reutilization, transfer, and donation screening. Equipment may not be physically delivered to the DRMO. When notified by the generating activity of the availability of excess equipment, screening shall be accomplished in accordance with Chapter XI.

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Under the manual's guidelines for domestic excess property, surplus drugs, biologicals, and reagents that need not be destroyed and are not designated as unfit for human use may be donated to public agencies for authorized public purposes and to nonprofit health educational institutions. When surplus drugs, biologicals, and reagents are considered for donation, a letter of clearance shall be obtained from the Food and Drug Administration (FDA) indicating which items may be safely donated. The State Agency or designated donee shall obtain the letter of clearance. The State Agency or designated donee shall obtain and provide samples of any items, as needed by the FDA to accomplish the clearance. Any payment of costs for laboratory examinations for quality assurance of samples shall be arranged by the State Agency. Before laboratory examinations are undertaken by FDA, an estimate of expected cost of the quality assurance shall be furnished by FDA to the State Agency. However, donation of controlled substances is not permitted.

Medical materials and supplies may be donated to a nonprofit medical or health organization for use in a foreign country under the authority of 40 U.S.C. 512(b) (1986). However, this authority is limited to medical items that fall within the definition of "foreign excess property." Therefore, the items to be donated must be located abroad. All donations of such property must conform to the foreign policy of the United States. Accordingly, Chapter XVI, Sale, Abandonment, or Destruction of Foreign Excess Personal Property, of DoD 4160.21-M requires that such donations be coordinated in advance with the State Department.

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